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BEFORE THE  
**Federal Communications Commission**

WASHINGTON, D.C. 20554

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JUN 15 1995

STANDARD & METEOROLOGICAL  
INFORMATION

In The Matter of )  
 )  
Petition for Rule Making )  
Filed By Pacific Bell Mobile Services ) RM-8643  
Regarding a Plan for Sharing )  
the Costs of Microwave Relocation )

ORIGINAL

To: The Commission

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**COMMENTS  
OF THE  
CITY OF SAN DIEGO**

The City of San Diego, by its attorneys, pursuant to Section 1.405 of the Rules and Regulations of the Federal Communications Commission (Commission), respectfully submits the following Comments in response to the Petition for Rule Making (Petition) filed by Pacific Bell Mobile Services (PacBell), on May 5, 1995, concerning the Commission's plan to relocate incumbent microwave users in the 2 GHz range.

**I. PRELIMINARY STATEMENT**

1. The City of San Diego is an incumbent licensee authorized to operate, among other telecommunications facilities, a point-to-point system in the Private Operational-Fixed Microwave Service ("POFS") that is governed by Part 94 of the

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Rules and Regulations of the Commission. These telecommunications facilities are used to support the daily public safety operations of several important agencies of the city. The facilities licensed to the City of San Diego are essential to the provision of public safety services to all residents and visitors in San Diego.

2. The Commission's Docket Nos. 90-314 and 92-9 led to the reallocation of spectrum in the 2 GHz range for emerging technologies, including Personal Communication Services ("PCS"), and to the adoption of reaccommodation provisions for those 2 GHz POFS licensees required to vacate their assignments for those new spectrum uses. One of the primary rules of this reaccommodation process is that PCS licensees must fully reimburse incumbents for the cost of involuntarily relocating to comparable facilities. Another important rule provides that Public Safety incumbents, like the City of San Diego, shall have a three-year period in which to negotiate the monetary and logistical terms of their early and voluntary relocation.

## **II. COMMENTS**

3. PacBell's Petition specifically addresses the "free-rider" problem which occurs when more than one PCS licensee benefits from the relocation of a microwave link but only one PCS licensee pays for that relocation. PacBell proposes a rule change to permit the initial PCS licensee which relocates a microwave incumbent to

acquire that incumbent's right to protection from interference. If any subsequent PCS licensee would have interfered with the microwave incumbent, assuming the microwave incumbent were still operating that link, then the PCS licensee which initially paid to relocate the microwave incumbent would be entitled to collect from the subsequent PCS licensee a share of the cost of relocation.

4. The City of San Diego strongly endorses the concept of creating a market for the sale of spectrum interference rights to replace the current system revolving around spectrum transmission rights. By adopting this concept of spectrum interference rights, the Commission would create a new basis for negotiation which would enable PCS licensees to overcome the current obstacle posed by free riders. However, PacBell's proposal to provide spectrum interference rights does not go far enough because it fails to address the incumbent microwave licensees' concerns about system fragmentation.

5. PacBell and the other PCS licensees talk in terms of replacing links. Microwave incumbents, however, must think in terms of replacing their entire systems; as one link is taken from a system, the microwave incumbent must replace it in order to keep the system operational. This incremental replacement can necessitate the acquisition of expensive conversion equipment in order to accommodate incompatible equipment from one end of a system to another. The microwave

incumbent will be forced to endure numerous replacement efforts including engineering, on-site replacement and testing. Furthermore, each negotiation will itself be costly, with transaction costs for each link significantly adding to the final costs of relocation of the system. Incremental link replacement is economically inefficient. It hurts incumbents' underlying operations and it wastes everyone's time.

6. The microwave incumbent will be under increasing pressure to move the whole system as more and more incremental changes occur and the transaction costs and operating expenses continue to mount. Under these circumstances, a PCS licensee wishing to obtain a link in the microwave incumbent's system will receive the benefits of earlier licensees' replacement of links in the microwave incumbent's system. Long before the subsequent PCS licensee arrives, the incumbent will be pressured to move the whole system in order to protect its underlying communications system. The microwave incumbent, however at that point will only have received compensation for replacing a few links of its system. Microwave incumbents would prefer to build a parallel system and enact a seamless handoff from the old, replaced system. Under the current reaccommodation procedures, this is not readily achievable.

7. To address this problem, it would be beneficial for incumbent microwave users, such as the City of San Diego, to negotiate for relocation of their

entire systems in one transaction rather than negotiating over and over again with different entities for relocation of individual links or portions of systems. The City of San Diego therefore encourages the Commission to develop rules to provide the necessary incentives for relocation of entire incumbent microwave systems.

8. The City of San Diego believes that the best way to accomplish this relocation objective is to create a new medium of exchange: spectrum interference rights, as suggested by PacBell. Specifically, the Commission should permit the initial PCS licensee to purchase the spectrum interference rights of an entire system, regardless of the MTAs and BTAs involved, the frequency blocks affected, and the initial PCS licensee's lack of authority to operate within some of those MTAs, BTAs and frequency blocks. The initial PCS licensee would negotiate for the entire incumbent microwave system, would obtain the spectrum interference rights for that entire system, but would only **operate** on links in the MTA/BTA and frequency block in which it is a PCS license winner. In this way, the initial PCS licensee would be able to provide PCS service where it is eligible much earlier than if negotiations are forced to transpire in piecemeal fashion. Eventually it will be reimbursed for much of its expense.

9. To mitigate the fears of MTA or BTA winners that their fellow winner could exclude them by buying out all systems in their MTA or BTA, the Commission

should allow MTA or BTA license winners to form acquisition agreements with their fellow MTA or BTA winners. These acquisition agreements would be sanctioned by the government and thus protected from antitrust claims.

10. By creating interference rights as a form of liquidity the Commission would promote the early relocation of systems, rather than links. In this way, microwave incumbents would be persuaded to find and develop their own comparable facilities, using the funds they received from the sale of their entire systems. In addition, PCS licensees would go on-line much sooner and would avoid the potentially drawn-out and contentious mandatory relocation process.

11. Spectrum interference rights permit the microwave incumbent to get out of the picture at an early date. The initial purchaser of spectrum interference rights would have two strong incentives to purchase the microwave incumbent's entire system. First, the initial purchaser could provide PCS service sooner than if it resorted to a protracted negotiation with the microwave incumbent. Second, the initial purchaser could recover much of its purchase price for the system by selling spectrum interference rights associated with those links to eligible PCS licensees at a later date. Thus, when a PCS winner is identified for a certain MTA or BTA in a certain frequency block, that winner would negotiate with the initial purchaser for transfer of a suitable portion of the system with the attendant spectrum interference

rights for that portion. A simple time limit, after which the later PCS licensee would be allowed to operate on the cleared block, would assure that the earlier PCS licensee, who initially cleared the band, could not use its spectrum interference rights unfairly.

12. Although PacBell's idea to use spectrum interference rights to circumvent the free rider issue is a worthy idea, it is flawed in one major respect: it creates a regulated market rather than a free market for spectrum interference rights by imposing a price cap and a cost sharing formula. In particular, PacBell's proposed cost sharing formula sets a reimbursement amount which is calculated using a formula with a \$600,000 per link price cap for the cost of relocation. Under PacBell's plan, the most an initial PCS licensee could collect from a second PCS licensee would be half this figure, or \$300,000. Initial PCS licensees, therefore, would be reluctant to pay more than \$600,000 to relocate a microwave link, since any amount they would pay above \$600,000 would not be pro rated among subsequent PCS licensees for reimbursement to the initial PCS licensee. Thus, the price cap would create an artificial ceiling on the voluntary negotiations.

13. In addition, the PacBell cost sharing plan places value on the incumbent's facilities on a per link basis, rather than a per system basis. This regulation, if adopted, would discourage free negotiations for relocation of entire

incumbent microwave systems. Under PacBell's proposal, the Commission would need to micro-manage the market for spectrum interference rights and would be required to scrutinize the details of cost-sharing agreements because supply and demand would not be permitted to set the proper price. The solution is to create spectrum interference rights without the valuation formula.

14. By instituting a system whereby spectrum interference rights are permissibly transferred to the initial PCS licensee/purchaser, the free market would eradicate the free rider problems without the need for a cost sharing plan or a per-link price cap. Those subsequent PCS licensees who value a particular link or portion of a system could negotiate with the initial purchaser of the system's spectrum interference rights to reach a market-influenced agreement. Under such a system, the Commission would not be needed to micro-manage the details of agreements because supply and demand would set the proper price.

15. In addition, microwave incumbents could have their entire facilities replaced and then freely seek to purchase new facilities of their own accord. The Commission would be spared the regulatory burdens of imposing mandatory negotiations, resolving intractable disputes and quantifying "comparable facilities" for each link in a system.




16. In summary, the City of San Diego submits that any rule making to resolve the free rider problem should create a new market for spectrum interference rights rather than impose price caps and cost sharing regimes. In this way, the free market forces of supply and demand would be employed to facilitate incumbent relocation and to avoid free rider problems. Open access to the spectrum interference rights of an entire incumbent microwave system would encourage early relocation of entire microwave systems rather than repeated piecemeal relocations. Negotiations during the three-year voluntary negotiation phase would remain free of de facto and implicit price caps. As planned, the three-year voluntary negotiation phase for Public Safety licensees would be governed by free market forces, which would permit voluntary cost sharing agreements among PCS entities following guidelines they themselves establish to meet their specific needs and bargaining positions.

**WHEREFORE, THE PREMISES CONSIDERED,** the City of San Diego respectfully submits the foregoing Comments and urges the Federal Communications Commission to act in a manner consistent with the views expressed herein.

Respectfully submitted,

**THE CITY OF SAN DIEGO**

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Dated: June 15, 1995

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**CERTIFICATE OF SERVICE**

I hereby certify that I have on this 15th day of June, 1995, served a copy of the foregoing Comments of the City of San Diego by United States Mail, postage prepaid, on the following:

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A handwritten signature in black ink, appearing to read "Terri R. Thomas", written over a horizontal line.

Terri R. Thomas